IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.214 OF 2007

Smt Sheelawati Vasudeao Oak ...Applicant

Versus

Mrs Jatanbai Jethamal Khivsara & Anr. ...Respondents

Shri Sandeep Marne for the Applicant.

CORAM : ABHAY S.OKA, J.
DATED : MAY 03, 2007.

P.C.:

1. Heard learned Advocate appearing for the Applicant. The Applicant is the Defendant in a suit for possession filed by the Respondents. The Appeal Court has passed a decree on the ground of acquisition of suitable residence against the revision Applicant.

2. The revision Applicant is a tenant in respect of a residential premises. The finding recorded by the Appeal Court is that the Applicant alongwith her four sisters inherited property bearing City Survey No.37/7 admeasuring 11124 Sq.feet situated at Erandawane, Pune on demise of her parents. The finding recorded by the Appeal Court is that the Applicant and her sisters executed a development Agreement in favour of a builder. Further finding that fact recorded is that construction of the building has been completed and a flat alloted to

the Applicant by the builder in the newly constructed building has been occupied by the son-in-law of the Applicant.

3. The submission of the learned Advocate appearing for the Applicant is that an occupation certificate is not granted as yet in respect of the newly constructed building on the property inherited by the Applicant. He submitted that unless the landlord discharges burden by establishing that an occupation certificate has been granted in respect of newly constructed building, it cannot be said that the landlord has discharged the burden on him to prove the acquisition of the suitable residence by the tenant. The second submission is that there was no burden on the Applicant to produce before the Court the material as regards status of construction of building. It is submitted that the Applicant had no opportunity to meet the evidence adduced by the landlord regarding the occupation of the flat by her son-in-law in the newly constructed building.

4. I have considered the submissions. It is not in dispute that the Applicant alongwith her four sisters inherited property bearing City Survey No.37/7 admeasuring 11124 Sq.feet at Pune. There was a constructed bungalow consisting of eight to ten rooms on

the said property. It is also an admitted position that after the demise of the mother of the Applicant in the year 1989, the Applicant and her sisters entered into a development Agreement with a builder for demolition of the old bungalow and for construction of a new building. It is an admitted position that the builder agreed to allot to the Applicant a flat having an area of 800 sq.feet (built up area) in the newly constructed building. In fact, a copy of the said Agreement has been annexed to this Revision Application.

5. In her evidence the Applicant pleaded ignorance about the stage of construction of the building by the builder. She admitted that a permission was applied for by the builder appointed by her from Municipal Corporation for construction of a building. However, in the cross-examination she stated that she was not aware about the commencement certificate obtained by the builder.

6. The Appeal Court has considered the evidence led by the landlord in the form of photographs of the newly constructed building and the tax assessment receipt. The photographs show that there is a name plate of the Applicant on the door of a flat in the newly constructed "Sneh Prabha" building. It is brought on record that

the name board of the Applicant's son-in-law also appears on the flat. It appears that he is occupying the flat. The Appeal Court has considered the evidence in the form of tax receipt in respect of the said flat issued by the Municipal Corporation.

7. The Applicant had an opportunity to disclose on oath the stage of construction. However, she has pleaded ignorance about the same when she entered the witness box. It is not at all the case made out by her in the Courts below that on account of want of occupation certificate, she is unable to occupy her flat in the newly constructed building.

8. There is evidence on record to show that the construction of building has been completed and the flat allotted to the share of the Applicant has been occupied by her son-in-law. Therefore, the Appellate Court has rightly held that the Applicant has acquired possession of a suitable residence.

9. Hence, no fault can be found with the finding of fact recorded by the Appeal Court. No case is made out for interference in a limited jurisdiction under section 115 of the Code of Civil Procedure, 1908. The Revision Application is accordingly rejected. At this stage, the

learned Advocate for the revision Applicant prays that possession of the suit premises may be protected for a reasonable time.

10. Decree for possession shall not be executed till 31st July, 2007 subject to condition of the Applicant filing in this Court an undertaking not to create any third party interest and not to part with possession of the suit premises. Undertaking shall be filed on or before 06th June, 2007.

JUDGE